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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,245	02/27/2004	John E. McAlvin	2785989-000082	9461

49840	7590	05/30/2007
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ		
SUITE 3100 SIX CONCOURSE PARKWAY		
ATLANTA, GA 30328		

EXAMINER	
NUTTER, NATHAN M	

ART UNIT	PAPER NUMBER
1711	

MAIL DATE	DELIVERY MODE
05/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10789245	2/27/04	MCALVIN ET AL.	2785989-000082

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ  
SUITE 3100 SIX CONCOURSE PARKWAY  
ATLANTA, GA 30328

**EXAMINER**

Nathan M.. Nutter

ART UNIT	PAPER
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1711

20070525

**DATE MAILED:**

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Nathan M. Nutter  
Primary Examiner  
Art Unit: 1711

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/789,245	Applicant(s) MCALVIN ET AL.	
	Examiner Nathan M. Nutter	Art Unit 1711	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

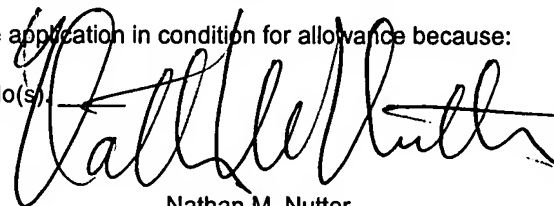
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: 13 and 15.  
Claim(s) rejected: 1-14, 16-21 and 25.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.



Nathan M. Nutter  
Primary Examiner  
Art Unit: 1711

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 1-11, 16-21 and 25 under 35 U.S.C. 103(a) as being unpatentable over Boeckeler et al (US 5,369,139) is hereby expressly withdrawn.

Continuation of 13. Other: Claim 13 will be noted as being objected to for the same reasoning as claim 15. The recitation of "up to about 30 percent by weight" includes the lower limit of "0 weight percent" in claim 15. Likewise, claim 13 recites the identical parameter. These claims are, indeed, broader than the claims from which they depend since the language of claim 12 and claim 14 require the presence of the constituent; claims 13 and 15 do not. The provisional rejection of claims 1-21 and 25 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/440,610, is being maintained since no Terminal Disclaimer has been filed.